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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

REPLY COMMENTS

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys, hereby submits its reply comments on the *Further Notice of Proposed Rulemaking* ("*FNPRM*") released by the Commission on November 7, 1996 with respect to the above-captioned proceeding.[1/]

WCA reiterates its strong support for the Commission's proposal to apply its liberalized ownership attribution criteria to cable-MDS cross-ownership, but *without* the Commission's proposed "33% equity or debt plus" test.[2/] As already noted by the Commission and in the

[1/] FCC 96-436 (rel. Nov 7, 1996).

[2/] Comments of The Wireless Cable Association International, Inc., MM Docket Nos. 94-150, 92-51 and 87-154, at 6-9 (filed Feb. 7, 1997) [the "WCA Comments"].

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supporting comments filed by WCA, Boston Ventures Management Inc. and The Blackstone Group, L.P., the Commission's current attribution standards for cable-MDS cross-ownership unnecessarily limit the wireless cable industry's access to the outside funding wireless cable operators must have to become fully competitive with incumbent wired cable and DBS providers.[3] The Commission cannot alleviate this problem if it imposes a 33% or any other equity or debt "cap" where the investor does not hold voting control.[4] Indeed, the Commission appears to have recognized as much in its recently adopted cable/LMDS cross-ownership rules, which include no restrictions on debt.[5] Certainly, given that wireless cable operators will compete directly with LMDS operators for outside investment, the Commission cannot in fairness impose a debt limitation on cable/MDS cross-ownership that places the wireless cable industry at a disadvantage *vis-a-vis* LMDS.

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[3] *FNPRM* at ¶ 44; WCA Comments at 6-9; Comments of Boston Ventures Management, Inc., MM Docket Nos. 94-150, 92-51 and 87-154, at 4-6 (filed Feb. 7, 1997) [the "Boston Ventures Comments"]; Comments of The Blackstone Group, L.P., MM Docket Nos. 94-150, 92-51 and 87-154, at 2-5 (filed Feb. 7, 1997). *See also* Comments of Tele-Communications, Inc., MM Docket Nos. 94-150, 92-51 and 87-154, at 8-23 (filed Feb. 7, 1997); Comments of Pappas Stations Partnership, MM Docket Nos. 94-150, 92-51 and 87-154, at 1-6 (filed Feb. 7, 1997).

[4] WCA notes that ABC, Inc. opposes the 33% "equity or debt plus" test but supports a presumption of attribution for an investment or equity stake over 50%. Comments of ABC, Inc., MM Docket Nos. 94-150, 92-51 and 87-154 at 8-9 (filed Feb. 7, 1997). To the extent that ABC intends that this proposal apply to cable/MDS cross-ownership, WCA opposes it. Again, there is no basis in the record for imposing *any* sort of "equity or debt plus" test in the cable/MDS context where an investor does not hold voting control.

[5] *In the Matter of Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service And for Fixed Satellite Services*, CC Docket No. 92-297, FCC 97-82, ¶¶ 185-199 (rel. Mar. 13, 1997).

Furthermore, no commenting party has suggested that an "equity or debt plus" test should be applied to the cable/MDS cross-ownership rule. To the extent that there is any substantial debate in this proceeding about the "equity or debt plus" test, it is focused on an issue that has no relevance to cable/MDS cross-ownership, *i.e.*, whether the Commission should apply the test to suppliers of broadcast programming and, more specifically, whether the Commission should apply the test to television broadcast networks as a means of preventing the networks from assuming excessive control over their affiliates.[6/] The Commission originally adopted the cable/MDS cross-ownership rule to ensure that cable operators would not preclude competition by "warehousing" MDS spectrum. For the reasons set forth in WCA's initial comments, the objective of the rule will be preserved absent any sort of "equity or debt plus" test, and the current debate between the networks and their affiliates is not a basis for the Commission to rule otherwise or to apply its cross-ownership rules to wireless cable's program suppliers.[7/]

[6/] *See, e.g.*, Comments of HSN, Inc., MM Docket Nos. 94-150, 92-51 and 87-154, at 13-15 (filed Feb. 7, 1997); Comments of ABC, Inc., MM Docket Nos. 94-150, 92-51 and 87-154, at 4-6 (filed Feb. 7, 1997); Comments of CBS, Inc., MM Docket Nos. 94-150, 92-51 and 87-154, at 4-7 (filed Feb. 7, 1997); Comments of Fox Broadcasting Company, MM Docket Nos. 94-150, 92-51 and 87-154, at 2-7 (filed Feb. 7, 1997); Comments of the Network Affiliated Stations Alliance, MM Docket Nos. 94-150, 92-51 and 87-154, at 6-8 (filed Feb. 7, 1997); Comments of Media Access Project, MM Docket Nos. 94-150, 92-51 and 87-154, at 7-16 (filed Feb. 7, 1997); Comments of Viacom, Inc., MM Docket Nos. 94-150, 92-51 and 87-154, at 4-9 (filed Feb. 7, 1997). Certain other commenting parties express general support for the 33% "equity or debt plus" test but do not suggest that it is appropriate for cable/MDS cross-ownership. *See, e.g.*, Comments of Knight-Ridder, Inc., MM Docket Nos. 94-150, 92-51, and 87-154, at 3-4 (filed Feb. 7, 1997); Comments of Paxson Communications Corporation, MM Docket Nos. 94-150, 92-51 and 87-154, at 39-40 (filed Feb. 7, 1997); Comments of Sinclair Broadcast Group, Inc., MM Docket Nos. 94-150, 92-51 and 87-154, at 13-14 (filed Feb. 7, 1997).

[7/] WCA further submits that recent developments in the DBS industry also militate strongly in favor of excluding the cable/MDS cross-ownership rule from any sort of "equity or debt plus" test. As the Commission is aware, EchoStar and News Corp. recently announced that they will combine

Finally, for the reasons already set forth in its initial comments, WCA once again urges the Commission to (1) make recommendations to Congress and amend its rules as necessary to eliminate long standing inconsistencies between the cable/MDS cross-ownership rule and the cable/MDS and cable/ITFS cross-leasing rules;[8] (2) recommend that Congress adopt a limited exception to the statutory cable/MDS cross-ownership ban to allow a wireless cable operator to serve fewer than 50% of its total subscribers nationwide with franchised "hard wire" cable operations;[9] and (3) recommend that Congress amend the statutory cable/MDS cross-ownership ban to include a rural exemption.[10] These proposals, if adopted, will help the wireless cable industry become a more effective competitor, since they will provide some badly needed coherence to the Commission's regulation of cable/wireless cable cross-ownership and give

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forces to control two of three full CONUS orbital slots and thereby for the first time offer up to 500 channels of digitally compressed video programming, including local broadcast stations. *See, e.g.*, "New DBS Alliance May Not Have to Lose 2nd Full-Conus Orbital Slot," *Satellite Week* (March 3, 1997). To the extent that the Commission believes that concentration in the DBS industry is necessary to achieve maximum competition to wired cable systems, it follows that the Commission should not impose any unnecessary restrictions on the wireless cable industry's ability to access the capital it needs to provide that very same competition *and* to offer a service comparable to that of DBS.

[8] WCA Comments at 9-12; Boston Ventures Comments at 5-6.

[9] WCA Comments at 12-15.

[10] Id. at 15-20.

wireless cable operators the flexibility to provide service via coaxial cable on a limited basis where it is necessary or more efficient to do so.

Respectfully submitted,

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